

INTERAGENCY ADVISORY GROUP

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Secretariat

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Minutes of the IAG Committee on Labor-Management Relations

May 10, 1979

Charles Feigenbaum, Deputy Assistant Director for Labor-Management Relations, presided at the meeting.

Mr. Feigenbaum distributed a list of FLRA decisions issued on April 27, 1979. Included in those decisions were the first two decisions by the Authority on unfair labor practice complaints: Hanscom Air Force Base and VA, Buffalo, N.Y. In both, the Authority adopted ALJ's findings that the complaints should be dismissed.

Mr. Feigenbaum stated that OLMR would continue to issue listings and concise summaries of FLRA decisions pending the establishment of a general issuance system. The exact method for publishing such decisions has not been determined by the FLRA. Some private organizations have expressed an interest in publishing the decisions of the FLRA. Mr. Ingrassia will be meeting with officials of the Authority on this matter and a report will be provided at a special IAG committee meeting or at the next regularly scheduled meeting.

Mr. Feigenbaum stated that the AFGE has expressed strong opposition to adverse actions taken by agencies where entire performance appraisal systems pursuant to Section 4302 of the Act have not been established. AFGE has taken the position that no action based on unacceptable performance may be taken until such systems are in place. Such systems must be in operation by October 1, 1981. The position of the OPM is that agencies may act to remove employees for failure to perform acceptably while the new performance appraisal systems are being established. They must, of course, comply with applicable law and regulations.

Mr. Feigenbaum discussed the following issues in cases that are awaiting action by the FLRA:

- AFGE has requested that the Authority issue a major policy statement on the meaning of 5 U.S.C. 7131 and particularly whether travel and per diem must be paid for union representatives who have been granted official time to perform representation functions. The AFGE has taken the position that payment for travel and per diem is mandatory under CSRA. The OPM has taken the position before the Authority that the case

should not be accepted as a major policy issue because the matter has been settled by opinions of the Comptroller General which established guidelines under which such payments may be made and by decisions of the Council which held that such matters are negotiable. In its submission to the Authority the OPM asserted that the issues raised in the instant case are best resolved on a case-by-case basis.

- A negotiability dispute between the Immigration and Naturalization Service and AFGE involves union proposals intended to expand Weingarten.
- The OPM will intervene in a case which involves a union proposal that probationary employees may grieve a termination under the negotiated grievance procedure on the ground that the action was arbitrary and capricious. OPM will take the position that matters involving appointment and examination are excluded from the coverage of the grievance procedure under Section 7121(c) of the Act and that the probationary period is part of those processes.

Tom Golatz, Department of Labor, discussed that Department's system for tracking the use of official time for representation functions. The system is designed to be compatible with an existing automatic data processing system that is used to record employee time and attendance. Under this system supervisors record the time used by an employee for various representation functions, e.g., grievances and appeals, labor-management meetings, negotiations, etc. All representation time is recorded, union and non-union. Mr. Golatz distributed copies of the list of representation functions for which time is recorded and a copy of the form used for such recording.

Tom Garnett, Department of Transportation, discussed a decision by the Assistant Secretary holding that the establishment of a subsistence fund from which PATCO members would be paid if suspended or discharged for their activities during work stoppages did not constitute an unfair labor practice in violation of Section 19(b)(4) of the Order. The FAA asserted that the establishment of the fund by PATCO constituted an action which condoned strikes or work stoppages. The Assistant Secretary held that while strikes and work stoppages are prohibited, the establishment of such a fund does not violate any prohibitions set forth in Section 19(b)(4), particularly, in the absence of any actual strike or work stoppage. The agency is considering whether to file a request for review by the FLRA.

Mr. Feigenbaum discussed a decision by the U.S. District Court for the District of Columbia in Allen v. U.S. CA77-1027, February 12, 1979, holding that guards employed by the National Gallery of Art are not entitled to overtime payment for time spent changing clothing before and after shifts, approximately 30 minutes per day, because they receive a paid 30 minute lunch period and two rest breaks which total an additional 40-55 minutes. These were normally duty free time and could be used to offset the time during which the guards changed clothing before and after shifts.